

BEFORE THE FEDERAL ELECTION COMMISSION

2016 SEP 15 PM 12:13

In the Matter of

2016 SEP 15 PM 12:55

MUR 7010

Erin McClelland

Erin McClelland for Congress, Inc.

Douglas Campbell, as treasurer

DISMISSAL AND

CASE CLOSURE UNDER THE

ENFORCEMENT PRIORITY

SYSTEM

CELA

SENSITIVE

GENERAL COUNSEL'S REPORT

Under the Enforcement Priority System, the Commission uses formal scoring criteria as a basis to allocate its resources and decide which matters to pursue. These criteria include, without limitation, an assessment of the following factors: (1) the gravity of the alleged violation, taking into account both the type of activity and the amount in violation; (2) the apparent impact the alleged violation may have had on the electoral process; (3) the complexity of the legal issues raised in the matter; and (4) recent trends in potential violations of the Federal Election Campaign Act of 1971, as amended (the "Act"), and developments of the law. It is the Commission's policy that pursuing relatively low-rated matters on the Enforcement docket warrants the exercise of its prosecutorial discretion to dismiss cases under certain circumstances. The Office of General Counsel has scored MUR 7010 as a low-rated matter and has determined that it should not be referred to the Alternative Dispute Resolution Office.¹

The Office of General Counsel recommends that the Commission exercise its prosecutorial discretion and dismiss the allegation that Erin McClelland, 2014 candidate for Pennsylvania's 12th Congressional District,² and McClelland for Congress, Inc. and Douglas Campbell in his official capacity as treasurer (collectively the "Committee") violated the Act when it falsely reported a disbursement and failed to disclose a debt owed to the complainant's firm in its 2015 Year-End

¹ The EPS rating information is as follows: Complaint filed: February 12, 2016. Response from Erin McClelland for Congress and Douglas Campbell, as treasurer filed: March 2, 2016.

² McClelland won the 2014 Democratic nomination, but lost the November 2014 general election. McClelland is now the 2016 Democratic nominee for the same seat.

1 disclosure report filed with the Commission.³ Specifically, complainant Sam Wheeler, on behalf of
2 Stokes, Wasser, and Wheeler, LLP ("SWW"), alleges that in the Committee's 2015 Year-End report,
3 it falsely disclosed a \$35,000 disbursement to SWW, for which the purpose was recorded as "debt
4 zeroed," and eliminated from its report a previously disclosed \$35,000 debt still owed to SWW.⁴ The
5 complaint refers to a memo submitted with the Committee's disbursement schedule on which the
6 Committee claimed that the "debt was reported by a part owner of the firm and previous campaign
7 manager, Adam Stokes" and that "[n]o contract for that amount was signed or produced by the firm.
8 Stokes, Wasser, and Wheeler, LLP and Adam Stokes have been paid in full for services rendered."⁵
9 The Complaint alleges that SWW has not been paid in full, and that the Committee still owes
10 \$35,000 to SWW for management and consulting services provided during the 2014 primary
11 election.⁶ Further, the Complaint asserts that even if the Committee did not agree that it owed the
12 debt, it should have been disclosed and reported as disputed.⁷

13 In a sworn response filed by the Committee's treasurer, Douglas Campbell states that he
14 became the Committee's treasurer in April 2015 and had no role with the Committee during the 2014
15 primary election.⁸ Campbell claims that when he assumed the Committee's reporting
16 responsibilities, the Committee was continuing to report the \$35,000 obligation to SWW as a "carry-
17 over" from McClelland's 2014 campaign.⁹ Campbell also indicates that when the Committee's

³ Compl. at 3 (Feb. 12, 2016).

⁴ *Id.* at 3-4.

⁵ *Id.* at 4.

⁶ *Id.*

⁷ *Id.*

⁸ Resp. at 1 (March 2, 2016).

⁹ *Id.*

1 "2015 annual report" was being prepared, the candidate "advised that the claim was being made by
2 those formerly in control of the campaign, and that they had made no effort to enforce it since the fall
3 of 2014."¹⁰ Campbell declares that "a decision was made to write off the disputed SWW claim by
4 'zeroing out' the amount on the Committee's 2015 annual report."¹¹ After the Committee filed its
5 2015 Year-End report, Campbell says that he received a call around February 9, 2015, from SWW's
6 counsel, who told Campbell that the Committee still owed the debt and that SWW intended to file a
7 complaint with the Commission, as well as a civil collection action.¹² Consequently, the Committee
8 amended its 2015 Year-End report on February 19, 2016, to remove the \$35,000 disbursement and
9 show the amount as a disputed debt.¹³

10 Committee treasurers are required to file reports of receipts and disbursements in accordance
11 with the provisions of the Act.¹⁴ The reports must include the amount and nature of outstanding
12 debts and obligations owed by or to the political committee.¹⁵ Further, the Commission's regulations
13 specify that a debt or obligation exceeding \$500 must be disclosed in the report that covers the date
14 on which the debt or obligation is incurred.¹⁶ Debts and obligations shall be continuously reported
15 until extinguished, and shall also include a statement explaining the circumstances under which each

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.* at 2.

¹³ Resp., Attach. 1 & 2.

¹⁴ 52 U.S.C. § 30104(a)(1), 11 C.F.R. § 104.1(a).

¹⁵ 52 U.S.C. § 30104(b)(8); 11 C.F.R. § 104.3(d).

¹⁶ 11 C.F.R. § 104.3(d).

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1 debt and obligation was incurred or extinguished.¹⁷ A Committee shall also report a disputed debt¹⁸
2 if the creditor has provided something of value to the political committee.¹⁹ Until the dispute is
3 resolved, the committee shall disclose on the appropriate reports any amounts paid to the creditor,
4 any amount the political committee admits it owes, and the amount the creditor claims is owed."²⁰

5 The Committee concedes that it did not disclose the \$35,000 debt as "disputed" in its original
6 2015 Year-End report. However, soon after SWW notified the Committee that it would file a
7 complaint with the Commission and attempt to collect the debt, the Committee amended its 2015
8 Year-End report to remove the reported disbursement and include the disputed debt. The Committee
9 has continued to report the debt in its subsequent disclosure reports.

10 The Committee quickly amended its 2015 Year-End disclosure report to include the disputed
11 debt, and continues to include the debt on its disclosure reports.²¹ Therefore, in furtherance of the
12 Commission's priorities, relative to other matters pending on the Enforcement docket, and in light of
13 the corrective actions taken by the Committee, the Office of General Counsel believes that the
14 Commission should exercise its prosecutorial discretion and dismiss the matter.²²

¹⁷ See 11 C.F.R. § 104.11(b).

¹⁸ A debt is disputed where an actual or potential debt or obligation owed by a political committee, including an obligation arising from a written contract, promise or agreement to make an expenditure, where there is a bona fide disagreement between the creditor and the political committee as to the existence or amount of the obligation owed by the political committee. 11 C.F.R. § 116.1(d).

¹⁹ 11 C.F.R. § 116.10(a).

²⁰ *Id.*

²¹ This matter is not referable to the Office of General Counsel or to the Commission's Alternative Dispute Resolution Office under the *Reports and Analysis Division Review and Referral Procedures for the 2013-2014 Election Cycle*.

²² *Heckler v. Chaney*, 470 U.S. 821 (1985).

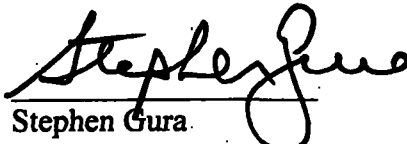
RECOMMENDATIONS

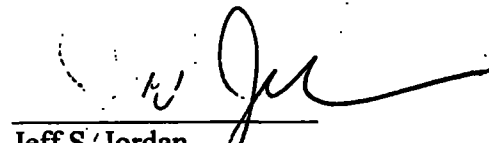
1. Dismiss the allegation that Erin McClelland, McClelland for Congress, Inc., and Douglas Campbell in his official capacity as treasurer violated 52 U.S.C. §§ 30104(a)(1) and (b)(8);
2. Approve the Factual and Legal Analysis;
3. Approve the appropriate letters; and
4. Close the file.


Kathleen M. Guith
Acting Associate General Counsel
for Enforcement

9.15.16
Date

BY:


Stephen Gura
Deputy Associate General Counsel
for Enforcement


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Attorney

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: Erin McClelland MUR 7010
Erin McClelland for Congress, Inc.
Douglas Campbell, as treasurer

I. INTRODUCTION

This matter was generated by a Complaint filed by Sam Wheeler, on behalf of Stokes, Wasser, and Wheeler, LLP ("SWW"), ("Complainant") on February 12, 2016, alleging violations of the Federal Election Campaign Act of 1971, as amended (the "Act") and Commission regulations by Erin McClelland, 2014 candidate for Pennsylvania's 12th Congressional District,¹ and McClelland for Congress, Inc. and Douglas Campbell in his official capacity as treasurer (collectively the "Committee"). It was scored as a relatively low-rated matter under the Enforcement Priority System, a system by which the Commission uses formal scoring criteria as a basis to allocate its resources and decide which matters to pursue.

II. FACTUAL AND LEGAL ANALYSIS

According to the Complainant, the Committee violated the Act when it falsely reported a disbursement and failed to disclose a debt owed to the complainant's firm in its 2015 Year-End disclosure report filed with the Commission.² Specifically, complainant Sam Wheeler, on behalf of Stokes, Wasser, and Wheeler, LLP alleges that in the Committee's 2015 Year-End report, it falsely disclosed a \$35,000 disbursement to SWW, for which the purpose was recorded as "debt

¹ McClelland won the 2014 Democratic nomination, but lost the November 2014 general election. McClelland is now the 2016 Democratic nominee for the same seat.

² Compl. at 3 (Feb. 12, 2016).

1 zeroed,” and eliminated from its report a previously disclosed \$35,000 debt still owed to SWW.³
2 The complaint refers to a memo submitted with the Committee’s disbursement schedule on
3 which the Committee claimed that the “debt was reported by a part owner of the firm and
4 previous campaign manager, Adam Stokes” and that “[n]o contract for that amount was signed
5 or produced by the firm. Stokes, Wasser, and Wheeler, LLP and Adam Stokes have been paid in
6 full for services rendered.”⁴ The Complaint alleges that SWW has not been paid in full, and that
7 the Committee still owes \$35,000 to SWW for management and consulting services provided
8 during the 2014 primary election.⁵ Further, the Complaint asserts that even if the Committee did
9 not agree that it owed the debt, it should have been disclosed and reported as disputed.⁶

10 In a sworn response filed by the Committee’s treasurer, Douglas Campbell states that he
11 became the Committee’s treasurer in April 2015 and had no role with the Committee during the
12 2014 primary election.⁷ Campbell claims that when he assumed the Committee’s reporting
13 responsibilities, the Committee was continuing to report the \$35,000 obligation to SWW as a
14 “carry-over” from McClelland’s 2014 campaign.⁸ Campbell also indicates that when the
15 Committee’s “2015 annual report” was being prepared, the candidate “advised that the claim was
16 being made by those formerly in control of the campaign, and that they had made no effort to
17 enforce it since the fall of 2014.”⁹ Campbell declares that “a decision was made to write off the

³ *Id.* at 3-4.

⁴ *Id.* at 4.

⁵ *Id.*

⁶ *Id.*

⁷ Resp. at 1 (March 2, 2016).

⁸ *Id.*

⁹ *Id.*

1 disputed SWW claim by 'zeroing out' the amount on the Committee's 2015 annual report."¹⁰
2 After the Committee filed its 2015 Year-End report, Campbell says that he received a call around
3 February 9, 2015, from SWW's counsel, who told Campbell that the Committee still owed the
4 debt and that SWW intended to file a complaint with the Commission, as well as a civil
5 collection action.¹¹ Consequently, the Committee amended its 2015 Year-End report on
6 February 19, 2016, to remove the \$35,000 disbursement and show the amount as a disputed
7 debt.¹²

8 Committee treasurers are required to file reports of receipts and disbursements in
9 accordance with the provisions of the Act.¹³ The reports must include the amount and nature of
10 outstanding debts and obligations owed by or to the political committee.¹⁴ Further, the
11 Commission's regulations specify that a debt or obligation exceeding \$500 must be disclosed in
12 the report that covers the date on which the debt or obligation is incurred.¹⁵ Debts and
13 obligations shall be continuously reported until extinguished, and shall also include a statement
14 explaining the circumstances under which each debt and obligation was incurred or
15 extinguished.¹⁶ A Committee shall also report a disputed debt¹⁷ if the creditor has provided

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¹¹ *Id.* at 2.

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¹³ 52 U.S.C. § 30104(a)(1), 11 C.F.R. § 104.1(a).

¹⁴ 52 U.S.C. § 30104(b)(8); 11 C.F.R. § 104.3(d).

¹⁵ 11 C.F.R. § 104.3(d).

¹⁶ See 11 C.F.R. § 104.11(b).

¹⁷ A debt is disputed where an actual or potential debt or obligation owed by a political committee, including an obligation arising from a written contract, promise or agreement to make an expenditure, where there is a bona fide disagreement between the creditor and the political committee as to the existence or amount of the obligation owed by the political committee. 11 C.F.R. § 116.1(d).

1 something of value to the political committee.¹⁸ Until the dispute is resolved, the committee
2 shall disclose on the appropriate reports any amounts paid to the creditor, any amount the
3 political committee admits it owes, and the amount the creditor claims is owed.”¹⁹

4 The Committee concedes that it did not disclose the \$35,000 debt as “disputed” in its
5 original 2015 Year-End report. However, soon after SWW notified the Committee that it would
6 file a complaint with the Commission and attempt to collect the debt, the Committee amended its
7 2015 Year-End report to remove the reported disbursement and include the disputed debt. The
8 Committee has continued to report the debt in its subsequent disclosure reports.

9 The Committee quickly amended its 2015 Year-End disclosure report to include the
10 disputed debt, and continues to include the debt on its disclosure reports. Therefore, in
11 furtherance of the Commission’s priorities, relative to other matters pending on the Enforcement
12 docket, and in light of the corrective actions taken by the Committee, the Commission exercised
13 its prosecutorial discretion and dismissed the matter.²⁰

¹⁸ 11 C.F.R. § 116.10(a).

¹⁹ *Id.*

²⁰ *Heckler v. Chaney*, 470 U.S. 821 (1985).